

David B. Carpenter (*pro hac vice*)
Brett E. Coburn (*pro hac vice*)
ALSTON & BIRD LLP
1201 West Peachtree Street, Suite 4900
Atlanta, Georgia 30309
Telephone: (404) 881-7000
Facsimile: (404) 881-7777
david.carpenter@alston.com
brett.coburn@alston.com

Meghan M. McBerry (SBN 334464)
ALSTON & BIRD LLP
55 Second Street, Suite 2100
San Francisco, CA 94105
Telephone: (415) 243-1000
Facsimile: (415) 243-1001
meghan.mcberry@alston.com

Attorneys for Defendant
DUNKIN' DONUTS FRANCHISING LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHELSEA GARLAND, TONYA HUGHES,
NATASHA HERNANDEZ, GEANEEN
COJOM, ARSENIO PELAYO, ALBERT
FITCH, PAULEEN MARA, LORA PREMO,
URCELINA MEDEIROS, RUBY SMITH,
individually and on behalf of all those similarly
situated,

Plaintiffs,

v.

DUNKIN' DONUTS FRANCHISING, LLC,
6201 HOLLYWOOD DONUTS LLC, BURTON
RESTAURANTS, LLC, RW OAKLAND LLC,
MADISON FOOD MANAGEMENT, LLC,
GOLDEN GATE RESTAURANT GROUP,
LLC,

Defendants.

Case No.: 3:23-CV-06621-SI

**DEFENDANT DUNKIN' DONUTS
FRANCHISING LLC'S RESPONSE TO
PLAINTIFFS' SUPPLEMENTAL BRIEF
REGARDING MOOTNESS**

Judge: Hon. Susan Illston
Date: March 14, 2025
Time: 10:00 a.m. PT
Location: San Francisco Courthouse
Courtroom 1 – 17th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Action filed: December 26, 2023
FAC filed: December 11, 2024

1 Contrary to Plaintiffs’ assertion, Defendant Dunkin’ Donuts Franchising LLC (“Dunkin’”) has not
2 taken the position that the change in policy regarding Non-Dairy Alternatives that was described in the
3 Joint Notice (Dkt. 74) (the “Policy Change”) moots Plaintiffs’ ADA claim. (*See* Dkt. 85 at 2 (“This is
4 particularly true where—as here—the defendant is contending that a change in policy has allegedly
5 mooted the plaintiff’s claims.”).)

6 Nor does Dunkin’ take such a position now. Ninth Circuit authority, including case law cited in
7 Plaintiffs’ supplemental brief, indicates generally that claims under Title III of the ADA cannot be mooted
8 by a change in policy, as contrasted with permanent structural changes to a physical location. (*See id.* at
9 2-4 (citing *Butler v. WinCo Foods, LLC*, 613 F. App’x 584, 585-86 (9th Cir. 2015) (rejecting mootness
10 because defendant’s exception to its policy was not “sufficiently entrenched and permanent”); *Hubbard*
11 *v. Sola Real Estate Fund I LLC*, No. CV 20-6964-MWF, 2022 U.S. Dist. LEXIS 80614, at *7 (C.D. Cal.
12 May 3, 2022), *aff’d*, No. 22-55562, 2023 U.S. App. LEXIS 19070 (9th Cir. July 26, 2023) (“The Court
13 has no doubts about the sincerity and earnestness of SoLa’s intentions and efforts to remedy the
14 accessibility of the tenant store and enforce its policy ensuring compliance. However, the implementation
15 of a policy is insufficient to satisfy the formidable burden of showing that the ADA violations at issue are
16 not likely to recur again.”) (internal quotation marks and citation omitted); *Sullivan v. Storer Transit Sys.*,
17 No. 20-cv-00143-JCS, 2020 U.S. Dist. LEXIS 105078, at *17-18 (N.D. Cal. June 16, 2020) (“In contrast
18 to permanent structural changes, voluntary cessation only amounting to a reversible policy change does
19 not show that the challenged conduct cannot reasonably be expected to recur.”); *Langer v. Kaimana LLC*,
20 No. CV 16-7452-DMG, 2016 U.S. Dist. LEXIS 168755, at *5 (C.D. Cal. Dec. 1, 2016) (“Unlike ADA
21 cases involving post-lawsuit structural alterations, which would require defendants to make physical
22 alterations to a non-ADA compliant property, the policy at issue here simply requires Defendants’
23 inaction.”)).)

24 While Dunkin’ has no present intention of modifying or discontinuing the recent Policy Change,
25 it recognizes that, under applicable Ninth Circuit authority regarding mootness in the context of claims
26 under Title III of the ADA, Plaintiffs’ ADA claim here has not been mooted by the Policy Change.
27
28

1 DATED: April 8, 2025

2 DAVID B. CARPENTER
3 BRETT E. COBURN
4 MEGHAN M. MCBERRY
5 **ALSTON & BIRD LLP**

6 /s/ Meghan M. McBerry
7 Meghan M. McBerry

8 Attorneys for Defendant
9 Dunkin' Donuts Franchising LLC
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

This is to certify that on April 8, 2025, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system which will automatically send an email notification of such filing to all attorneys of record.

ALSTON & BIRD LLP

/s/ Meghan M. McBerry

Meghan M. McBerry

Attorney for Defendant

Dunkin' Donuts Franchising LLC